IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

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WRIT PETITION NOs:4390 of 1997 and 5378 of 1998

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Writ Petition No.4390 of 1997:

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Between:

The Special Officer, Krishi (Krishna Industrial Self-help Institution) Near P.W.D. Grounds, Vijayawada, Krishna District.

..... PETITIONER

AND

1 The Presiding Officer , Labour Court, Guntur.

2 Gudipati Venkata Nagendra Rao, s/o G.V.Bhagavan, Aswani Nursing Home,

Suryaraopet, Jaddagamvari Street, Vijayawada-2, Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue rule nisi calling for the records pertaining to the Award passed in I.D.No.463 o 1989 on the file of the Presiding Officer, Labour Court, Guntur as communicated by the Government of A.P.. The Labour Employment Training and Factories (LAB.I.) Department Vide G.O.R.T.No.3075 dated 14.11.1996 and quash the same by issuing an appropriate Writ order or direction particularly one in the nature of Writ of Certiorary declaring the said award as arbitrary, illegal, irregular, unconstitutional and violative of the principles laid down under law and ab initio void and pass such other and further order or orders as may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.K.RAMANUJACHARI

Counsel for the Respondents: MR.V.V.L.N.SARMA

Writ Petition No.5378 of 1998:

Between:

Gudipati Venkata Nagendra Rao, s/o G.V.Bhagavan, Aswani Nursing Home,

Suryaraopet, Jaddagamvari Street, Vijayawada-2, Krishna District.

..... PETITIONER

AND

1. The Special Officer, Krishi (Krishna Industrial Self-help Institution), Near

P.W.D. Grounds, Vijayawada, Krishna District.

2 The Presiding Officer, Labour Court, Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order one in the nature of writ of certiorari by calling for the records relating to and connected with the Award in I.D.No.463/89 on the file of the 2nd respondent and quash the same in so far as denial of back wages is concerned as illegal and grant such other just and consequential relief as this court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.V.L.N.SARMA

Counsel for the Respondents: MR.K.RAMANUJACHARI

The Court made the following:

COMMON ORDER:

These two writ petitions are filed by the management and workman aggrieved by the award passed by the Labour Court in I.D.No.463 of 1989 dated 01.04.1996, under which the order of termination was set aside and reinstatement was ordered with continuity of service, but, however, without back wages.

The workman was appointed as a Clerk-cum-Typist on 16.01.1985 on payment of Rs.20/- per day. The workman was also paid Rs.60/- per month towards steno allowance as he was also doing steno services. The workman worked continuously upto 08.05.1987. The workman made a representation to the management in 1986 for grant of regular scale of pay. But, as there was no positive response from

the management, the workman approached the Assistant Commissioner of Labour, who is also the Conciliation Officer, seeking appropriate relief. According to the management, the workman did not discharge the duties as directed by the Special Officer of the management on 28.03.1987 by not typing certain important material on the ground that he has got some personal work and therefore, the management framed appropriate charges and disciplinary proceedings were initiated and an Enquiry Officer was also appointed, who conducted the enquiry and submitted a report giving finding against the workman. Basing on the said enquiry report, the services of the workman were terminated by proceedings dated 08.05.1987. Aggrieved by that order of termination, the workman approached the Labour Court. According to the workman, the management has framed frivolous charges without any material and, therefore, sought for setting aside the order of removal from service with consequential relief of reinstatement and other benefits. This was contested by the management and evidence was adduced by both sides. The Labour Court, after appreciating the evidence, found that there is no merit in the first charge as the charge was framed against the workman on the ground that he has approached the Assistant Commissioner of Labour, who was also the Conciliation Officer, seeking certain relief to which the workman was entitled. With reference to the second charge, the Labour Court found that the alleged misconduct of insubordination was proved as, admittedly, the workman failed to type out certain important material, but, however, considered the proportionality of the punishment imposed and found that the punishment of removal imposed on the workman, was disproportionate to the alleged misconduct committed by the workman. Therefore, the order of removal was set aside by the Labour Court and at the same time, it denied back wages.

Aggrieved by the order of reinstatement, the management has come up with the present writ petition, while the workman, aggrieved by the denial of back wages, filed the second writ petition.

The learned counsel for the management contended that the Labour

Court was not justified in ordering reinstatement even after upholding the charge framed by the management authorities having been proved against the workman. According to the learned counsel, when once the charge of misconduct of insubordination is proved, the workman is not entitled for any benefit of reinstatement. Alternatively, the learned counsel contended that the workman was engaged only on daily wage basis, therefore he is not entitled to the benefit of the order of reinstatement.

The learned counsel for the workman, however, on the other hand, supported the order of the Labour Court insofar as the order of reinstatement is concerned. With reference to the denial of back wages, the learned counsel contended that the Labour Court committed an error in not awarding back wages, as admittedly the management denied the workman to work. Therefore, when once the order of reinstatement is made, as a consequence the workman is entitled for back wages. But, the denial of back wages is not proper and just.

Heard both sides and considered the material on record.

Admittedly, the workman was appointed as a Clerk-cum-Typist in the year 1985 and he worked till 1987 continuously without any break. But, on 08.05.1987, the workman was removed from service as a result of departmental enquiry. It is the case of the management that the workman had misconducted himself and therefore two charges were framed and enquiry was conducted and the enquiry officer submitted a report giving finding against the workman with reference to both the charges. But, the Labour Court on appreciation of the material on evidence held that the first charge is not at all a charge of misconduct as the first charge is with reference to the conduct of the workman in approaching the Assistant Commissioner of Labour seeking certain benefits as to the regular scale of pay and other benefits to which he is entitled under law. As rightly observed by the Labour Court, the said charge could not have been framed and the conduct could not be considered as misconduct. With reference to

the second charge, according to the management, the workman did not type out certain important material, which was urgently required for placing an order. The said charge was found proved by the enquiry officer which was also upheld by the Labour Court. But, however, the Labour Court felt that the punishment of removal imposed on the workman was disproportionate to the misconduct committed by him, and therefore, ordered reinstatement. The said finding cannot be considered as perverse or without any basis or even unreasonable. Therefore, the said finding cannot be interfered with.

Coming to the back wages, though the workman was removed from the service in the year 1987, he approached the Labour Court only in the year 1989. Further, in the light of the finding on the second charge as to the misconduct found against the workman, he could not have been awarded back wages.

At the time of hearing, however, it is represented by the learned counsel for the management that though the workman was reinstated by virtue of the orders of the Labour Court, he is not continuing in service as he was absenting from duties. If the workman is not continuing in service and absented himself unauthorizedly, it is always open to the management to take appropriate steps as contemplated under law.

Under the above circumstances, the Labour Court was justified in denying the back wages while ordering reinstatement with continuity of service. Therefore, both the writ petitions are dismissed as devoid of merits. No costs.

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03.09.2004

VGB

To

1. The Special Officer, Krishi (Krishna Industrial Self-help Institution), Near P.W.D. Grounds, Vijayawada, Krishna District.

2 The Presiding Officer, Labour Court, Guntur.

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